

Remarks

Applicant incorporates herein all of the previous arguments and statements presented in the Response filed June 2, 2005 (and Response with RCE filed December 16, 2005) and therefore maintains the traversals. The present action essentially reiterates the Office Action issued April 4, 2005, with the minor exception of a new secondary citation the Ishii '065 reference (6,741,065) used in an attempt to support a hindsight-type double-patenting and obviousness-type rejections. As further discussed below, these rejections fail to appreciate the claimed invention as the combined teachings of the prior art do not provide any form of a charging circuit that would be motivated or correspond to Applicant's claimed invention. More specifically, all of the rejections are based on the premise that Applicant's claimed invention is obvious in view the combined teachings of the Lawrence '414 reference in view of the Ishii '065 patent. These combined teachings, however, fail to satisfy the main two criteria under the statute: motivation and correspondence.

The Office Action dated February 24, 2006, presents four rejections under the judicially created doctrine of obviousness-type double patenting: claims 1, 2, and 5 stand rejected over claim 1 of U.S. Patent No. 6,636,014 in view of the Ishii '065 patent; claim 3 stands rejected over claim 1 of U.S. Patent No. 6,636,014 in view of Ishii in further view of Matsuda *et al.* (U.S. Patent No. 5,563,493); claim 4 stands rejected over claim 1 of U.S. Patent No. 6,636,014 in view of Ishii in further view of Kan *et al.* (U.S. Patent No. 5,168,205); and claim 6 stands rejected over claim 1 of U.S. Patent No. 6,636,014 in view of Ishii in further view of Kan *et al.* and Rogers (U.S. Patent No. 5,528,148).

The Office Action dated February 24, 2006, also indicated that claims 1, 2, 5, 7, 8 and 12 stand rejected under 35 U.S.C. § 103(a) over the Lawrence '414 patent in view of the Ishii '065 patent ("the combined teachings"); claim 3 stands rejected under 35 U.S.C. § 103(a) over the combined teachings and further in view of Matsuda *et al.*; claim 4 stands rejected under 35 U.S.C. § 103(a) over the combined teachings and further in view of Kan *et al.*; claim 6 is rejected under 35 U.S.C. § 103(a) over the combined teachings and further in view of Kan *et al.* and Rogers; claims 9-11 are rejected under 35 U.S.C. § 103(a) over the combined teachings and Nagai *et al.* (U.S. Patent No. 6,291,965); and claim 13 is rejected

under 35 U.S.C. § 103(a) over the combined teachings and Feldstein (U.S. Patent No. 5,646,504).

Applicant respectfully traverses each of the above rejections because the combined teachings are based on a modification of the Lawrence reference which is unmotivated, and would destroy the equipment batteries of Applicant's claimed invention. As shown in Figure 6, the Lawrence reference is directed to charging secondary batteries arranged in parallel simultaneously and while located on a trailer while it is being towed. Through the combined teachings, these batteries would be charged in parallel simultaneously (in which case there would be no need for the teachings of the Ishii '065 patent, or these batteries would be charged one battery at a time with the ground (or common) terminal remaining intact and the positive terminal being switched from the positive terminal of one battery to the next.

Neither situation furthers the rationale of the Examiner's rejection. In the case where these batteries would be charged in parallel simultaneously, there would be no need for the teachings of the Ishii '065 patent because the teachings of the Ishii '065 patent would be redundant. In the case where these batteries would be charged one battery at a time, the modifying teachings of the Ishii '065 patent would undermine the purpose of charging the batteries in parallel simultaneously; according to MPEP § 2143.01 this rejection is improper because the modification would undermine the purpose of the relied-upon embodiment of the Lawrence reference. Consequently, the prior art would not lead the skilled artisan to modify the reference. *See, e.g., In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Moreover, according to the claimed embodiments of the present invention in which the batteries are in series, neither approach works: the batteries are not in parallel; and charging these batteries one battery at a time with the ground (or common) terminal remaining intact would destroy the charging circuit and/or the next battery in series.

In an effort to facilitate prosecution, claims 1 and 8 have been modified to include "series" without prejudice to prosecuting the underlying versions of these claims. Applicant notes that one or more (in)dependent claims previously included limitations directed to this

electrical configuration (*e.g.*, independent claim 7, dependent claim 12 and/or dependent claim 13). The subject matter of such claims is discussed more fully below.

Applicant also respectfully traverses each of the obviousness-type double patenting rejections. Because much of the rationale from these rejections tracks the rationale used in asserting the Section 103(a) rejections, Applicant's discussion in this regard follows the discussion of the Section 103(a) rejections.

Applicant provides more specific details in support of the traversals below.

In response to the Section 103(a) rejections of claims 1 and 8, Applicant disagrees with the Office Action's assertion that it would have been obvious to combine the Lawrence and Ishii references, because the charging system from the Ishii reference would not work in combination with Lawrence. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." MPEP §2143.01. There are significant technical problems with the Office Action's proposed modification of the Lawrence reference.

The Ishii reference teaches a system for charging and discharging batteries one at time, which relies on the batteries having memory that contains information about the charge and discharge status of the batteries. (Fig. 1, col. 5, lines 45-55). Before beginning to charge the batteries, the charger must get the charge and discharge states from each battery. (col. 9, line 43-53). The Ishii reference is primarily useful for charging batteries which must be discharged before charging, such as nickel-cadmium battery packs which have memory and are to be discharged before charging. (col. 3, lines 34-41, and col. 7, lines 7-42). The Applicant asserts that there is no motivation to combine the Lawrence and Ishii references because the Ishii charging system would not

work in combination with Lawrence. The Lawrence reference is directed to charging secondary batteries located on a trailer while it is being towed. The secondary batteries in the Lawrence reference do not have memory and also do not need to be discharged before charging. The proposed modification undermines the purpose of the Lawrence. In view of the above, the proposed modification of the Lawrence reference is unmotivated, and the Section 103(2) rejections should be removed.

In regard to dependent claims 2-6, 12, and 13, which depend from claim 1, and dependent claims 9-11, which depend for claim 8, Applicant requests that the Section 103(a) rejections be withdrawn, because they are improper for the reasons discussed above.

With respect to the rejection of claim 7, Applicant respectfully traverses and submits that under 35 U.S.C. §112(6) the limitations directed to “charging means” fail to correspond to the references cited by the Office Action. Paragraph six of section 112 provides that any structure and/or function taught in the Specification that differs from asserted prior art precludes an assertion of correspondence between the teachings. See, MPEP § 2184. The Office Action acknowledges that the Lawrence reference does not teach or suggest a charging means for automatically charging the equipment batteries one at a time. The Ishii references teaches automatically charging the batteries one at a time, but does not teach that the batteries are configured in series for operation in a trailered equipment as shown in Figures 3 and 4 and the relevant discussion of the claimed invention. In the Specification, the Applicant provides various structures which exemplify a circuit (“charging means”) useful for implementing the structure, such as discussed at page 14, lines 15-16 (with reference to Fig. 6), in connection with the control signals used for relays (or solenoids) which are adapted to change the polarity when switching the charging current from one battery to the next. No such structure, or its equivalent, is present in the combined teachings. Without a presentation of correspondence to each of the claimed limitations, the Section 103(a) rejection cannot be maintained and Applicant respectfully requests that it be withdrawn.

Moreover, Applicant respectfully traverses the section 103(a) rejections because the references cited by the Office Action do not teach or suggest all of the limitations found in the dependent claims of the claimed invention. For Example, the cited portion of the references do not teach or suggest the limitations of claim 3 directed to beginning charging the equipment batteries according to a circuit-defined time interval. The Office Action acknowledges that the combination of the Lawrence and Ishii references fails to teach automatically stopping charging one of the equipment batteries and beginning charging another of the equipment batteries according to a circuit-defined time interval. The Office Action's citation to the Matsuda reference fails to overcome this deficiency as the cited portion only teaches stopping charging and fails to teach any beginning of charging according to a circuit-defined time interval. Without a presentation of correspondence to each of the claimed limitations, the Section 103(a) rejection cannot be maintained and Applicant accordingly requests that the rejection be withdrawn.

In regard to claim 4, the cited portions of the references do not teach or suggest the limitations directed to automatically stopping charging one of the equipment batteries and beginning charging another of the equipment batteries according to a user-established time interval. The Office Action acknowledges that the combination of the Lawrence and Ishii references fails to teach automatically stopping charging one of the equipment batteries and beginning charging another of the equipment batteries according to a user-established time interval. In an attempt to overcome this deficiency, the Office Action erroneously asserts that the Kan reference teaches automatically stopping charging of one equipment battery according to a user-established time interval. The Kan reference merely teaches charging a single battery. Moreover, the Kan reference does not teach stopping charging at a user-established time interval, merely changing the charging rate, *e.g.*, from fast mode to automatic mode (column 9, lines 18-21). Without a presentation of correspondence to each of the claimed limitations, the Section 103(a) rejection cannot be maintained and Applicant accordingly requests that the rejection be withdrawn.

Moreover, the references cited by the Office Action do not teach or suggest the claim 6 limitations directed to automatically stopping charging one of the equipment

batteries and beginning charging another of the equipment batteries at a time that is defined as a function of a user-defined expected travel time. The Office Action acknowledges that the combination of the Lawrence and Ishii references fails to teach automatically stopping charging one of the equipment batteries and beginning charging another of the equipment batteries at a time that is defined as a function of a user-defined expected travel time. The Office Action's reliance on the Rogers reference is misplaced as the Rogers reference fails to teach use of travel time to influence the charging of batteries. Applicant fails to recognize where the Rogers reference teaches beginning charging an equipment battery as a function of a user-defined expected travel time. Without a presentation of correspondence to each of the claimed limitations, the Section 103(a) rejection cannot be maintained and Applicant accordingly requests that the rejection be withdrawn.

In regard to claim 13, the cited portions of the references do not teach or suggest the limitations directed to two of the three equipment batteries are arranged in series and/or to the limitations directed to the third battery not in series therewith. The Office Action acknowledges that the combination of the Lawrence and Ishii references fails to teach wherein at least two of the three equipment batteries are arranged in series. The Office Action's reliance on the Feldstein reference is misplaced in that the Feldstein reference teaches charging a string of batteries in series at the same time. The equipment batteries in the claimed invention are connected in series and charged one at time, per claim 1, not charged in series all at the same time as in Feldstein. The Office Action's assertion that it would have been obvious to a person of ordinary skill to arrange the batteries in series as in Feldstein, so as to allow an efficient method of charging a string of batteries is misplaced. The Applicant contends that it would not have been obvious to one of ordinary skill due to the fundamentally different way in which the batteries are charged in the claimed invention. Without a presentation of correspondence to each of the claimed limitations, the Section 103(a) rejection cannot be maintained and Applicant accordingly requests that the rejection be withdrawn.

Notwithstanding the above deficiencies, the claims have been amended to more specifically recite and provide the environment to which Applicant's invention was intended to be addressing. For example, claim 2 (and related claims) has been amended to more expressly set forth that which appears to be already understood when reading the claims on the exemplary embodiments; that where at least two of the plurality of equipment batteries are configured in series for operation in a trailered equipment, the charging circuit includes a circuit for changing polarities from the power connection when automatically alternating the power connection. The references cited by the Office Action do not teach or suggest the limitations of claim 2 for the same reasons discussed above relating to claim 13. Without a presentation of correspondence to each of the claimed limitations, the Section 103(a) rejections cannot be maintained and Applicant accordingly requests that the rejections be withdrawn.

With respect to the obviousness-type double patenting rejections, Applicant respectfully traverses for the reasons discussed above. To maintain an obviousness-type double patenting rejection, the Office Action must largely comply with the same standards as those applicable to a §103 rejection. In this case, the Office Action does not present prior art that has been combined with Applicant's underlying patent to satisfy either a §103 rejection or an obviousness-type double patenting rejection. Accordingly, Applicant requests that each of the double patenting rejections be withdrawn.

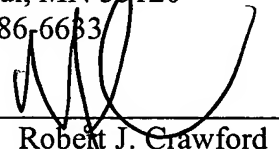
Additionally, Applicant has attached testimonials, marked Appendix A, which show the commercial success of the claimed invention. The attached documents can also be found on the website www.stayncharge.com. Applicant asserts that it is well established that commercial success is a secondary consideration that must be considered in making a determination of whether an invention is obvious in view of the prior art. *See Graham v. John Deere Co.*, 383 U.S. 1 (1966) and MPEP § 2141.02.

In view of the above discussion, Applicant believes that the rejection has been overcome and the application is in condition for allowance. A favorable response is requested. Should there be any remaining issues that could be readily addressed over the telephone (including but not limited to a discussion of any need for a Terminal Disclaimer), the Examiner is encouraged to contact the undersigned at (651) 686-6633, extension 101.

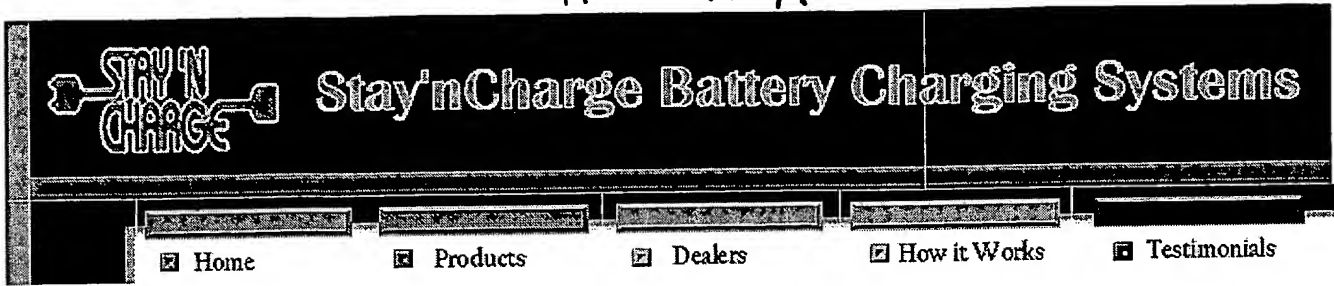
Respectfully submitted,

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Dated: June 26, 2006

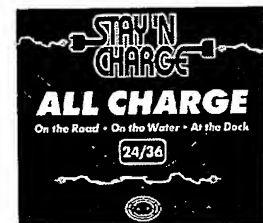
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Appendix A



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Fishing Pro Testimonials

Read what Tony Atwood pro bass fisherman with Champion Fishing Guides In Minnesota and other Pro's say about the "Stay'NCharge" system. Tony has more than 19 years experience bass fishing and has won several major bass tournaments.

Everyone needs to experience the Stay-N-Charge Battery system. When I first talked to President Jim Payne about his new Stay-N-Charge battery system, it was a story to good to be true. What really caught my ears was when he told me that I shouldn't have to worry about plugging in the boat after a long hard day of fishing. So let me get this straight. You're telling me that after 8 or more hours of fishing I can come home, unhook the boat and go relax until the next fishing day and not worry about if my batteries are charged?

Jim Payne's reply, "Heck yeah man. It's awesome!"



The Stay-N-Charge battery system will charge almost 3 batteries from fully dead to about 98% charged within a short 2 hours of driving time. Whether you're driving on the highway or around town the Stay-N-Charge battery system will still be putting the same amount of amps into your batteries as long as they need charge. So that means if you have an hour drive from the lake and then another hour drive back to the lake your batteries should be fully charged by the time you unhook and launch your boat. Remember the charging system will charge almost 3 batteries from FULLY dead to 98% within 2 hours. Needless to say I doubt your batteries are going to be fully dead after a day of fishing.

Another huge plus to the Stay-N-Charge battery system is that it will charge your batteries with a DC charge. Not an AC charge. What does this mean, you might ask? Well, ask yourself how long is the average life on your boat batteries? Maybe 3-4 years, right? Now ask yourself how long your car or truck batteries last? Probably an average of 5-7 years. The reason for this is that your boat batteries are taking a charge from an AC charger not a DC charger like your car or truck battery. Besides the longer battery life you get from the Stay-N-Charge battery system you also maximize the battery itself. It has been proven that an AC charger will only charge the battery to about 88% of its full capacity. When you are using a DC charge it will charge your battery to about 98% of its full capacity. That in turn will give you longer time on the water.

Many people have worried about the Stay-N-Charge battery system interfering with the vehicles computer or electrical systems. The real truth is that it doesn't have anything to do with it. If it did, I wouldn't be using it. It takes about an hour to install Stay'NCharge in your vehicle and boat and it's really simple. All Stay'NCharge really does is take the left over charge from your alternator and run it back to the batteries in your boat. If a battery doesn't need a charge it won't take a charge. But, since you have your Stay-N-Charge battery system installed it will run that same charge to the batteries that need the charge.

[click here to read more customer comments](#)

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Testimonials

Dear Jim,

I thought I would send you this note and thank you for creating such a wonderful product in the Stay-N-Charge All Charge. This thing is awesome! No boat should be without it.

The installation of the All Charge does have a number of steps but it was very easy and straightforward and I think that pretty much anyone could do it. It's pretty much a black to negative, red to positive and you are done. The time it takes to install depends more I think on how long it takes you to decide where to mount the device and how you want to run the wires through your boat and vehicle as it does on your mechanical knowledge and ability. I installed mine in a hotel parking lot using only a couple of small hand tools that any person should already have in their boat. Start to finish it probably took me about a half an hour of actual work to do. I think it is one of those things once you install the first one and you see what is all involved in it, installing a second one would go much faster.

The first couple of times out fishing, I didn't get much productive fishing in. I was having to much fun trying to run the batteries down on Hi-bypass and then starting the big motor and driving around seeing how long it takes for the numbers to go back up. This was how I first tested the All Charge. It probably wasn't the best way, but the numbers on the gauge went back up so I was happy. It wasn't until another month or so later that I went on a trip to Florida that I saw the true power of the All Charge. We fished for seven days, eight to ten hours a day, running the trolling motor continually and didn't plug in once. What more can you ask for? To add to our charging needs, we bought a couple of dozen shiners and put them in the livewell. Because of their cost, about a dollar a piece, no one really wanted to use them. So they stayed in the livewell for pretty much the whole week. We just kept the recirculators on 24 hours straight to keep them alive. I don't think that without the All Charge I would have done this. With the All Charge though, I knew that if the recirculators ran my starter battery down at night, on the drive to the lake in the morning the All Charge would have it charged backup and ready to go.

thanks for a great product

Alan Weatherly

Product Showcase: Stay-N-Charge By Kip Pollay - AZOD Fishing Field Staff.



Whether you are a recreational watercraft user or a tournament angler, you find yourself constantly charging batteries. I know that after a long day on the water the last thing I want to do is drag out the cords and battery chargers. But I do so because it is best to get those batteries back to a full charge as soon as possible. I would much rather be jumping into the shower, and working my way onto the sofa. Even if you have a charging system that simply plugs in to an AC outlet, there are drawbacks we will discuss later.

The ideal situation would be pulling into the drive with your batteries already charged, right? Well don't laugh, you actually can. The Stay-N-Charge battery system is all that you need to put your battery charging woes to rest. Stay-N-Charge simply uses your tow vehicle's charging system to re-charge your recreational crafts batteries as you are driving home.

Most of the lakes that I fish on are at least a 1-1 1/2 hour drive, which is perfect for this system. The Stay-N-Charge system can charge one to three 12-volt batteries, wired in parallel, to a 98% full-charge in 1-2 hours. (Parallel meaning positive post to positive post and negative post to negative post.) The rare case of three totally drained batteries will need at least two hours, but how often do you drain three? With normal use, you will arrive home 98% charged in an hour drive. And better yet, you are topping out your charge as you drive to the lake on your next outing.

This truly sounded too good to be true, so I spoke in depth with Stay-N-Charge founder, Jim Payne, about some concerns I had for this system. It sounded to me like I would be pushing my alternator too hard. He informed me of the 30 amp shortstop circuit breaker that limits the draw to less than 30 amps. Since your tow vehicle doesn't need the alternator that much, and your typical alternator in modern trucks is at least 100 amp or better, there should not be a problem. Also, you are now charging your DC batteries with a DC charger.

Another question I had was about the charge time on a two-day tournament. I worried about getting the same charge in the same time with an engine at idle. Did the RPM's help the alternator charge faster? The answer is no. Your alternator will charge the same if it is parked or rolling down the road. This is good to know as no one wants to start the second day of a tournament with a low charge. I wasn't crazy about idling my truck for an hour and a half, but what is the alternative? There are few campgrounds with AC power, and not everyone wants to buy a generator. Anyway, I have found that my truck idles for a long period just fine.

How about the install? I believe that anyone with basic skills can install the wire loom in about an hour. I actually had mine neatly installed in 30 minutes. The kit had everything I possibly needed and simple instructions as well.

The concept of Stay-N-Charge is rather simple but extremely effective. Now that I have used one for the past two months, I wouldn't want to charge any other way. I definitely have one less thing to worry about when preparing for a tournament or family outing.

Stay-N-Charge is making its way across the country and Jim is talking with some potential distributors in Arizona.

at this time

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TOM HERMAN - GULL GUIDE SERVICE

As a guide and tournament angler, a fully charged battery is as important to me as catching fish. Without a full charge, I am at an instant disadvantage.

Many times in the past I have been unable to place a charge on my batteries due to travel and or lack of a power source. Those days are over now that I have installed the Stay-N-Charge system. No longer do I need to worry about losing valuable time due to the need to plug my charger into a stationary outlet. With Stay-N-Charge, I now just drive to my next destination and my truck's alternator delivers the necessary charge my batteries, and I for that matter, need for a successful day on the water.

Installation of the Stay-N-Charge system was extremely easy. I just followed the directions with the unit and I was ready to receive the benefits this unit provides.

With the Stay-N-Charge system, I have found a few key benefits-

1) Time is saved by no longer having to wait for my batteries to charge on a traditional charging system. I am constantly fishing new water, oftentimes on lakes that are some distance from one another. Before, I needed to plug my battery charger into an outlet which anchored me to one location for a period of time. Now, I can save that time by having the Stay-N-Charge system charge my batteries while I drive to the lake, which in turn increases my time on the water.

2) Energy is saved by utilizing an existing power source, my vehicles alternator. By using the power created by the alternator, I do not need to use another power source once I get to a location where I am able to use an outlet. This saves energy as well as dollar amounts on my electric bill.

3) If I am in an area where an outlet is unavailable, such as a remote lake or campground, I can let my truck's engine idle while it charges my deep cycle batteries. Of course this uses gas, but it is better than not having charged trolling motor batteries.

I would highly recommend the Stay-N-Charge system to everyone from those who are out fishing for recreation, to those whom fishing is a way of life and income. Your batteries will stay charged with Stay-N-Charge.

Tom Herman

Gull Guide Service

[click here to read about another happy Stay'NCharge user!](#)

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